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13 N.A.*

14
15 **UNITED STATES DISTRICT COURT**
16
17 **DISTRICT OF NEVADA**

18 BANK OF AMERICA, N.A., SUCCESSOR BY
19 MERGER TO BAC HOME LOANS
20 SERVICING, LP, F/K/A COUNTRYWIDE
21 HOME LOANS SERVICING, LP,

22 Case No.: 2:16-cv-00810-KJD-NJK

23 **STIPULATION AND ORDER TO STAY
24 LITIGATION PENDING FINAL
25 RESOLUTION OF PETITION(S) FOR
26 WRIT OF CERTIORARI TO UNITED
27 STATES SUPREME COURT**

28 Plaintiff,

vs.

29 ARLINGTON WEST TWILIGHT
30 HOMEOWNERS ASSOCIATION; SFR
31 INVESTMENTS POOL 1, LLC; and ALESSI &
32 KOENIG, LLC,

33 Defendants.

34 SFR INVESTMENTS POOL 1, LLC, a
35 Nevada limited liability company,

36 Counter/Cross Claimant,

37 vs.

38 BANK OF AMERICA, N.A., SUCCESSOR BY
39 MERGER TO BAC HOME LOANS
40 SERVICING, LP, FKA COUNTRYWIDE
41 HOME LOANS SERVICING, LP; KIMBERLY
42 McLAUGHLIN, an individual; and JASON
43 McLAUGHLIN, an individual,

44 Counter/Cross Defendants.

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1 Plaintiff Bank of America, N.A., successor by merger to BANA Home Loans Servicing, LP
 2 f/k/a Countrywide Home Loans Servicing, LP (**BANA**) and defendant SFR Investments Pool 1, LLC
 3 (**SFR**) (collectively, the **parties**), the only parties to have appeared in this action, stipulate to
 4 temporarily stay this case as follows:

5 1. This lawsuit involves the parties seeking quiet title/declaratory relief and other claims
 6 related to a non-judicial homeowner's association foreclosure sale conducted on a Property pursuant
 7 to NRS 116.

8 2. On August 12, 2016, the Ninth Circuit issued its decision on appeal in *Bourne Valley*
 9 *Court Tr. v. Wells Fargo Bank, N.A.*, 832 F.3d 1154, 1159-60 (9th Cir. 2016) holding that NRS 116
 10 is facially unconstitutional. The Court of Appeals issued its mandate in the appeal on December 14,
 11 2016, vacating and remanding the judgment to the United States District Court, District of Nevada.

12 3. On January 26, 2017, the Nevada Supreme Court issued its decision in *Saticoy Bay*
 13 *LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, a Div. of Wells Fargo Bank, N.A.*,
 14 133 Nev. Adv. Op. 5, ___ P.3d ___, 2017 WL 398426 (Nev. Jan. 26, 2017), holding, in direct
 15 contrast to *Bourne Valley*, that no state action supported a challenge under the Due Process Clause of
 16 the United States Constitution.

17 4. The parties in *Bourne Valley* and *Saticoy Bay* are seeking review of both decisions in
 18 the United States Supreme Court. *Bourne Valley*'s deadline to file its petition for writ of certiorari of
 19 the Ninth Circuit's *Bourne Valley* decision is April 3, 2017. *See Bourne Valley Court Trust v. Wells*
 20 *Fargo Bank, NA.*, United States Supreme Court Case No. 16A753. Wells Fargo's deadline to file its
 21 petition for writ of certiorari of the Nevada Supreme Court's *Saticoy Bay* decision is April 25, 2017.
 22 Thus, the parties believe that the stay requested herein is appropriate.

23 5. On February 8, 2017, the Nevada Supreme Court stayed the issuance of the remittitur
 24 in *Saticoy Bay* pending the filing of a petition for a writ of certiorari with the United States Supreme
 25 Court, and if a petition is filed, the stay of the remittitur will remain in effect until final disposition
 26 of the certiorari proceedings before the United States Supreme Court.

1 6. Since then, several judges in this district have stayed similar cases pending the
 2 exhaustion of all appeals before the United States Supreme Court. *E.g., Nationstar Mtg. LLC v.*
 3 *Green Valley S. Owners Assoc.*, No. 2:16-cv-00883-GMN-GWF; *Bank of America, N.A. v. Canyon*
 4 *Willow Trop Owners' Assoc.*, No. 2:16-cv-01327-GMN-VCF (D. Nev. Oct. 26, 2016); *Deutsche*
 5 *Bank Nat'l Trust Co. v. Copper Sands HOA*, No. 2:16-cv-00763-JAD-CWH (D. Nev. Feb. 28, 2017).

6 7. To determine if a continued stay is appropriate, the Court considers (1) damage from
 7 the stay; (2) hardship or inequity that befalls one party more than the other; and (3) the orderly
 8 course of justice. *See Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066
 9 (9th Cir. 2007) (setting forth factors). Here, the factors support a stay of litigation.

10 a. Damage from Stay: Any damage from a temporary stay in this case will be minimal
 11 if balanced against the potential fees, costs, and time which would surely ensue in this matter if
 12 litigation were allowed to continue that could be mooted by a decision in *Bourne Valley* certiorari
 13 proceedings. Indeed, the parties will be able to avoid the cost and expense of continued legal
 14 proceedings in light of what is unsettled law to say the least. Moreover, the Court will be relieved of
 15 expending further time and effort until the conflict between the circuit and Nevada Supreme Court is
 16 resolved. Thus, a stay will benefit all parties involved herein.

17 b. Hardship or Inequity: There will be no significant hardship or inequity that befalls
 18 one party more than the other. This relatively equal balance of equities results from the need for all
 19 parties to have finality, given the split in the state and federal court decisions. The parties agree that
 20 any hardship or inequity falling on any of them is outweighed by the benefits of a stay.

21 c. Orderly Course of Justice: At the center of this case is a homeowners' association's
 22 foreclosure sale under NRS 116. The outcome of the petitions for writ in *Bourne Valley* and/or
 23 *Saticoy Bay* have the potential to affirm or overturn either case. Without a stay, the parties will
 24 expend resources that will be unnecessary if either or both petitions are granted. A stay would also
 25 avoid a likely appeal from any subsequent judgment in this case. A temporary stay would
 26 substantially promote the orderly course of justice in this case. A stay will avoid the moving
 27 forward without final resolution of the federal issues and the state court/federal court conflict.

1 The parties agree that all proceedings in the instant case, including motion and other
2 litigation deadlines, are stayed pending final resolution of the *Bourne Valley* and/or *Saticoy Bay*
3 certiorari proceedings before the United States Supreme Court.

4 8. Defendant SFR shall be required to keep current on all property taxes and
5 assessments, HOA dues, maintain the property, and maintain insurance on the property at issue.
6 SFR shall also be required to provide proof of payment and insurance upon reasonable notice to
7 counsel for BANA.

8 9. Defendant SFR shall be prohibited from selling or encumbering the property unless
9 otherwise ordered by the Court.

10 10. Plaintiff BANA is prohibited from conducting foreclosure proceedings on the
11 property unless otherwise ordered by the Court.

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1 11. Any party may file a written motion to lift stay at any time for either party determines
2 it appropriate.

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4 DATED this 15th day of March, 2017.

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17 IT IS FURTHER ORDERED that Defendant's Motion to Certify (#28) is DENIED.

18 **IT IS SO ORDERED.**

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20 
UNITED STATES DISTRICT JUDGE

21 DATED: March 16, 2017